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November 30, 2010

Marlene H. Dortch  
Secretary  
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WASHINGTON, DC

*Re: Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services, WT Docket No. 05-265*

Dear Ms. Dortch:

Southern Communications Services, Inc. d/b/a SouthernLINC Wireless (“SouthernLINC Wireless”) reiterates its support of Commission action to adopt a data roaming obligation that will make access to mobile data services available to all consumers throughout the country.

As set forth below, expanding the availability of nationwide access to mobile data services to all businesses and consumers in the United States – including to small businesses and to those businesses and consumers with limited service provider options – will encourage investment and lead to job creation and economic growth.

In order to recognize these significant benefits to the US economy, however, the Commission must also ensure that any network management practices used by host carriers to manage the traffic on their networks are applied on a nondiscriminatory basis to roaming traffic and the host carrier’s own traffic alike. Any exception that would allow host carriers to discriminate against roamers is unnecessary and would be vulnerable to anticompetitive abuses that could effectively undermine the economic and public interest benefits that a data roaming rule would confer.

## **I. Commission Action on Data Roaming Will Spur Investment, Job Creation, and Economic Growth**

Chairman Genachowski recently stated, “At the FCC, our primary focus is simple: the economy and jobs.”<sup>1</sup> The adoption of an automatic data roaming obligation would

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<sup>1</sup> / Prepared Remarks of Chairman Julius Genachowski, “Our Innovation Infrastructure: Opportunities and Challenges,” NARUC Annual Meeting, Atlanta, GA, Nov. 15, 2010, at 1.

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serve this stated policy goal by catalyzing private investment, creating quality jobs, and fostering growth in the U.S. economy.

First, an automatic roaming requirement for data services would not only encourage, but is essential, to innovation and the investment in and deployment of advanced wireless technologies, networks, and services. Contrary to the assertions of the nation's two largest carriers, the extensive record that has been developed in this docket clearly indicates that the *lack* of any data roaming obligation has in fact *inhibited* investment in advanced networks and facilities, and will continue to do so unless and until the Commission takes action.

As the Commission observed in its *Fourteenth Report* on mobile wireless competition, "roaming can be particularly important for small and regional providers with limited network population coverage to remain competitive by meeting their customers' expectations of nationwide service."<sup>2</sup> If a regional or rural carrier is unable to obtain data roaming in order to provide subscribers with the seamless connectivity they expect and require, then subscribers will be far less likely to buy data service from that carrier. With fewer potential subscribers, the regional or rural carrier has far less opportunity to recover any investment in advanced data networks or services, and thus less incentive (or even ability) to make the necessary investment in the first place.

However, the adoption of data roaming obligations would provide regional and rural carriers with the certainty they need to move forward with these much-needed investments. These investments by regional and rural carriers will in turn spur even further investment by the larger nationwide carriers as a competitive response. At the same time, the provision of data roaming at reasonable rates (including a reasonable profit) would provide host carriers with an additional source of revenue that can be used for additional investment in their own networks, customers, and competitive service offerings, while the presence of viable competitors in the market would provide the competitive incentive for such investments to be made.<sup>3</sup> Moreover, the availability of data roaming will increase the incentives for more wireless carriers to bid competitively in future spectrum auctions, resulting in greater revenues for the US Treasury.

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<sup>2</sup> / *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, WT Docket 09-66, Fourteenth Report, FCC 10-81 (rel. May 20, 2010) ("*Fourteenth Report*") at ¶ 125.

<sup>3</sup> / The fact that AT&T and Verizon would prefer to forego this certain revenue stream demonstrates that they are concerned not with investment and innovation, but rather with thwarting competition and further consolidating their dominant positions in the market.

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The increased investment that will result from the adoption of clear data roaming obligations will directly encourage job growth and economic development, particularly in fields related to the construction and operation of new wireless facilities and networks. In addition to new employment opportunities with the wireless carriers themselves, examples of business sectors that would directly benefit economically from increased investment by wireless carriers as a result of data roaming include tower construction and leasing, equipment manufacture and sales, provision of backhaul facilities and services, and the provision of software and support for network management.<sup>4</sup>

According to Bloomberg BusinessWeek, one research firm found that, as a result of public demand for mobile data services, “[c]apital spending by major carriers in the U.S. could rise to \$28.7 billion in 2011”<sup>5</sup> – a figure that would increase significantly with the substantial additional investment from regional and rural carriers and new market entrants that would be encouraged by the availability of data roaming. And, as Chairman Genachowski stated in his recent speech at the NARUC Annual Conference, “reports ... tell us every billion dollars spent on infrastructure will create 20,000 to 40,000 jobs – jobs that can’t be outsourced.”<sup>6</sup>

The significant economic benefits of making data roaming available to all wireless consumers throughout the United States on reasonable rates, terms, and conditions are not limited to the communications, technology, and infrastructure sectors, but extend throughout the US economy.

Industry studies consistently demonstrate that wireless data services will have a significant impact on the US economy. For example, a 2008 report by industry research firm Ovum – a copy of which is attached for the Commission’s consideration – projected that the productivity gains resulting from the deployment and use of wireless broadband services “will generate almost \$860 billion in additional GDP over the next decade”<sup>7</sup> and that “small businesses and the health care sector in particular are realizing significant benefits from the implementation and use

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<sup>4</sup> / See, e.g., Olga Kharif, *Managing the Wireless Data Deluge*, Bloomberg BusinessWeek, Dec. 23, 2009, [http://www.businessweek.com/technology/content/dec2009/tc20091223\\_992099.htm](http://www.businessweek.com/technology/content/dec2009/tc20091223_992099.htm) (last visited Nov. 24, 2010).

<sup>5</sup> / *Id.* (citing findings by the research firm IDC).

<sup>6</sup> / Prepared Remarks of Chairman Julius Genachowski, “Our Innovation Infrastructure: Opportunities and Challenges,” NARUC Annual Meeting, Atlanta, GA, Nov. 15, 2010, at 2.

<sup>7</sup> / Roger Entner, Ovum, *The Increasingly Important Impact of Wireless Broadband Technology and Services on the U.S. Economy: A Follow-up to the 2005 Ovum Report on the Impact of the U.S. Wireless Telecom Industry on the U.S. Economy: A Study for CTIA – The Wireless Association*, 2008 (“2008 Ovum Report”) at 4. A copy of the 2008 Ovum Report is attached with this filing for inclusion in the record of this proceeding. See also *Fourteenth Report* at ¶ 227 (citing the 2008 Ovum Report).

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of wireless broadband.”<sup>8</sup> The same report also projected that, “by 2016, the value of the combined mobile wireless voice and broadband productivity gains to the US economy – \$427 billion per year – will exceed today’s motor vehicle manufacturing and pharmaceutical industries combined.”<sup>9</sup>

However, one of the key factors underlying these staggering economic and productivity benefits is the mobility inherent in wireless technology. Businesses and consumers in rural and underserved areas should not lose these mobility aspects because they cannot avail themselves of roaming for data services when traveling outside their service provider’s network. Without access to automatic roaming for all mobile wireless services – including data services – these businesses and consumers will be effectively isolated and cut off from the social and economic benefits these services are bringing elsewhere in the nation, thus creating a “wireless divide” similar to (and compounding) the “digital divide” that the *National Broadband Plan* was designed to overcome.

According to the *National Broadband Plan*, “nearly 9 % of rural business sites still do not have access [to mobile wireless broadband], compared to less than 1% of business sites in urban or suburban areas.”<sup>10</sup> The *National Broadband Plan* further cautions that, “while a business location may have coverage, the value in mobile broadband comes when employees can access applications *everywhere*, which limits the importance of this particular coverage metric.”<sup>11</sup> This latter point is especially relevant for businesses in rural areas, which may have an office or primary location in a town or along a major highway corridor with coverage, but whose employees live or work outside of this coverage area.

A recently-issued report to Congress commissioned by the Small Business Administration on the impact of broadband speed and price on small businesses similarly found a significant disparity between businesses located in urban markets and those located in rural markets.<sup>12</sup> According to the SBA Report, “Although there is not a significant difference between metro and rural markets in terms of businesses’ *need* for broadband, there are significant differences between metro and rural areas with respect to the availability, performance, and price of high-speed broadband

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<sup>8</sup> / 2008 Ovum Report at 2.

<sup>9</sup> / *Id.*

<sup>10</sup> / *National Broadband Plan* at 22.

<sup>11</sup> / *Id.* (emphasis added).

<sup>12</sup> / Columbia Telecommunications Corporation, “The Impact of Broadband Speed and Price on Small Business,” prepared for Small Business Administration, Office of Advocacy, Nov. 2010 (“SBA Report”), <http://www.sba.gov/advo/research/rs373tot.pdf> (last viewed Nov. 24, 2010).

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options.”<sup>13</sup> In order to assist in advancing the US small business market, the SBA Report recommended, among other things:

- “Stay the course on national broadband planning and implementation of the National Broadband Plan;”<sup>14</sup> and
- “Encourage and enable small business broadband providers and competitors” – a category which would include smaller regional and rural wireless carriers – “by providing access to network infrastructure or otherwise lowering barriers to entry.”<sup>15</sup>

Thus, as set forth in the SBA Report, prompt Commission action to adopt a data roaming obligation would promote the interests of the US small business market by enabling small businesses – particularly those in more rural areas – to recognize the economic benefits and productivity gains that mobile data services provide.

## **II. Roaming Traffic Must be Subject – On a Nondiscriminatory Basis – to the Same Network Management Practices that Apply to the Host Carrier’s Own Traffic**

As discussed above, the adoption of a data roaming obligation would further the Commission’s policy goals of encouraging private investment and fostering job creation and economic growth. However, these policy goals would be undermined if the Commission were to permit an exception to any data roaming obligation that would allow a host carrier to prioritize traffic for their own customers and degrade service to roamers as a means of managing network congestion.

By permitting a host carrier to prioritize traffic and discriminate against roamers, the Commission would create an exception that would swallow any data roaming rule. As discussed below, such an exception is unnecessary, would be difficult (if not impossible) to administer effectively, and could be easily exploited for anticompetitive purposes. The Commission should therefore reject AT&T’s request for a “carve out” that would allow a host carrier to prioritize its traffic over roaming traffic and should instead clarify that roaming traffic must be subject – on a

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<sup>13</sup> / SBA Report at 1 (emphasis added).

<sup>14</sup> / As the Commission is well aware, the *National Broadband Plan* states that “[d]ata roaming is important to entry and competition for mobile broadband services” and recommends that the Commission “move forward promptly in the open proceeding on data roaming.” *National Broadband Plan* at 49.

<sup>15</sup> / SBA Report at 3 and 56 – 58.

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nondiscriminatory basis – to the same network management practices and techniques that the host carrier applies to its own traffic.

SouthernLINC Wireless certainly understands the need for wireless carriers to be able to effectively manage the traffic and capacity of their networks in order to minimize congestion or other service disruptions. Nevertheless, SouthernLINC Wireless believes that carriers should be able to sufficiently manage any potential capacity or congestion issues on their networks through the non-discriminatory application to roamers of the same reasonable network management practices that they apply to their own subscribers.<sup>16</sup>

As an initial matter, there has yet to be any evidence presented anywhere in this proceeding of capacity issues caused by the presence of roamers on a host carrier's network. While the capacity issues AT&T experienced on its network soon after the launch of the exclusive iPhone are well known, it must be emphasized that these issues were neither caused nor exacerbated by the presence of roamers on the AT&T network. If anything, AT&T's experience emphasizes that its own subscribers are just as likely – if not more likely – to be utilizing bandwidth-intensive applications, and their cumulative level of bandwidth usage will far exceed that of roamers.<sup>17</sup>

In addition, developing projections of the volume of data roaming traffic by simply using the size of the requesting carrier's entire subscriber base will result in a grossly distorted and exaggerated view of the potential impact data roaming could have on the host carrier's network capacity. In reality, only a very small portion of a requesting carrier's subscribers would actually be roaming on the host carrier's network at any particular moment, and these roamers would furthermore be spread across different points of the host carrier's network. Thus, any additional traffic generated by roamers will generally be minimal, especially in proportion to the amount of traffic generated by the host carrier's own subscribers.<sup>18</sup> Moreover, under the proposed data roaming rule, host carriers would be entitled to charge a reasonable

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<sup>16</sup> / SouthernLINC Wireless also suggests that host carriers be expected to apply the Commission's priority access rules (47 C.F.R. § 64.402 and Part 64, Appendix B) on a non-discriminatory basis to all customers on its network, including roamers. Such a requirement would ensure that priority access-eligible users would continue to have access to respond to emergencies, assist in recovery efforts, etc., when outside their home network's coverage area.

<sup>17</sup> / In fact, a roamer is probably far less likely to be a "bandwidth hog" than a host carrier's own subscribers, since the roaming charges that the roamer must pay in addition to data usage charges would serve as an effective deterrent against "overuse" of the network.

<sup>18</sup> / See Reply Comments of MetroPCS, filed July 12, 2010, at 56 – 57 (calculating that a data roaming requirement would result in a 2-4% increase in roaming traffic across AT&T's entire network); See also Comments of Cincinnati Bell Wireless, filed June 14, 2010, at 12; Reply Comments of the Rural Telecommunications Group, filed July 12, 2010, at 12 – 13.

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fee for the provision of data roaming services. Thus, the host carrier would be directly (and profitably) compensated for the use of its network capacity by the requesting carrier's roaming subscribers.

SouthernLINC Wireless agrees that wireless carriers must have flexibility to develop and employ reasonable network management practices to manage traffic loads and alleviate congestion on their networks. However, these reasonable network management practices should be applied to roamers on a non-discriminatory basis, rather than allowing host carriers to identify roamers – either as a group or by the roamers' home carriers – that would then be subject to different network management protocols.

SouthernLINC Wireless is particularly concerned that a data roaming obligation that allows a host carrier to discriminate against roamers – *i.e.*, through practices such as assigning roamers lower priority for network access or lower service quality levels – would be vulnerable to a form of anticompetitive abuse that would be almost impossible to monitor and which could effectively undermine the public interest benefits that data roaming would confer. For example, a host carrier could degrade roaming consumers' access to mobile data services and/or degrade the quality of service roamers are able to receive, while at the same time complying with “the letter of the law” with respect to the host carrier's data roaming obligations by claiming “network congestion,” regardless of whether network congestion in fact exists.

Allowing host carriers to engage in network management practices that prioritize the traffic and service quality of their own subscribers over roamers also raises a host of additional issues. For example, what would the potential liability be for either the host carrier or the home carrier if the host carrier degrades, denies, or cuts off a roamer's communication when the roamer is attempting to access emergency services?

In addition, how could the Commission effectively monitor and police for anticompetitive abuse of such a “network management” exception? Where would the lines be drawn in determining whether a particular network management practice that treats roaming traffic differently is “reasonable” or is being applied in a reasonable manner, rather than anticompetitively? How finely can (or may) a host carrier shut down or degrade service to roamers – at the cellsite level? The switch level? System-wide? For how long? Could host carriers assign different levels of prioritization to roamers from different home carriers? How could either a requesting carrier or the Commission itself determine whether a host carrier was in fact experiencing network congestion?

As these questions demonstrate, any exception to the data roaming requirement that would treat prioritization of and discrimination against roaming traffic as a network

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management practice that is *per se* reasonable would be nearly impossible to administer and would effectively nullify all of the economic, policy, and public interest benefits that a data roaming obligation would confer.

Finally, SouthernLINC Wireless finds the concern that the nation's two largest wireless carriers have over the possible impact that roamers may have on their network capacity to be curious, given that these carriers are actively marketing their wireless networks to electric utilities and government regulators as a platform for new data-centric "Smart Grid" systems. In fact, representations that both AT&T and Verizon have repeatedly made in separate proceedings before the Commission and other agencies regarding their network capacity and network management capabilities strongly indicate that their concern over the potential impact of roamers is nothing more than a "red herring."

For example, in a separate Commission inquiry regarding the communications services necessary to support electric utility "Smart Grid" systems, both AT&T and Verizon repeatedly represented that their existing wireless networks are already capable of handling the additional data traffic that Smart Grid applications would generate and that their planned LTE networks will be suitable for handling the demands of Smart Grid as well.<sup>19</sup> AT&T and Verizon made similar representations to the US Department of Energy (DOE) in response to the DOE's Request for Information on the communications requirements of electric utilities – a study undertaken by DOE in response to a specific recommendation in the *National Broadband Plan*.<sup>20</sup>

If the nation's two largest wireless carriers are confident that their wireless networks have sufficient capacity and network management capabilities to handle the additional data traffic that Smart Grid would generate, then they should have little, if any, concern over any potential capacity or congestion issues arising as a result of roamers.

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<sup>19</sup> / See Comments of AT&T, NBP Public Notice #2, GN Docket Nos. 09-47, 09-51, and 09-137, filed Oct. 2, 2009, at 12 – 14 and 17 – 18; Comments of Verizon and Verizon Wireless, NBP Public Notice #2, GN Docket Nos. 09-47, 09-51, and 09-137, filed Oct. 2, 2009, at 4 – 5 and 14.

<sup>20</sup> / See US Department of Energy, *Implementing the National Broadband Plan by Studying the Communications Requirements of Electric Utilities to Inform Federal Smart Grid Policy*, Comments of Verizon and Verizon Wireless (filed July 12, 2010) at 10 and Reply Comments of AT&T (filed Aug. 9, 2010) at 18 – 22. The Department of Energy's Request for Information (RFI), its Final Report, and links to all comments and reply comments filed in response to the RFI are available on the Department's website at <http://www.gc.energy.gov/1592.htm> (last viewed Nov. 24, 2010).

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Similarly, in another Commission inquiry on the survivability of broadband infrastructure, AT&T and Verizon both touted their ability to manage traffic and potential congestion on their wireless networks.<sup>21</sup> According to AT&T:

For its part, AT&T engineers its wireline and wireless broadband networks to high standards that maximize available capacity and minimize congestion during periods of heavy network use. This enables AT&T to provide continuous service during periods of significant congestion caused by extraordinary events.<sup>22</sup>

Again, the confidence that AT&T and Verizon have in the ability of their networks to handle traffic even during extraordinary events indicates that any concern they have regarding the potential impact of roamers is unfounded.

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For the reasons set forth above, SouthernLINC Wireless respectfully urges the Commission to act promptly to adopt a data roaming obligation that will make access to mobile data services available to all consumers throughout the country, no matter where they may work, live, or travel.

If you should have any questions, please do not hesitate to contact the undersigned.

Very truly yours,

/s/ Shirley S. Fujimoto

Shirley S. Fujimoto  
David D. Rines

Counsel for SouthernLINC Wireless

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<sup>21</sup> / *Effects on Broadband Communications Networks of Damage to or Failure of Network Equipment or Severe Overload*, PS Docket No. 10-92, Comments of AT&T (filed June 25, 2010) at 2 and 19 – 21; *Effects on Broadband Communications Networks of Damage to or Failure of Network Equipment or Severe Overload*, PS Docket No. 10-92, Comments of Verizon and Verizon Wireless (filed June 25, 2010) at 4 – 5.

<sup>22</sup> / *Effects on Broadband Communications Networks of Damage to or Failure of Network Equipment or Severe Overload*, PS Docket No. 10-92, Comments of AT&T (filed June 25, 2010) at 19.

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